

Decision 02-01-017 January 9, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application Under Public Utilities Code Section 851 for Approval of the Acquisition by ECI Communications, Inc. d/b/a ITS Network Services of the Interexchange and Local Resale Telecommunications Operating Authorities and Other Assets of Integrated TeleServices, Inc. (U-5441-C).

Application 01-10-025
(Filed October 24, 2001)

OPINION GRANTING APPROVAL OF TRANSFER OF ASSETS

1. Summary

This application seeks approval under Pub. Util. Code § 851 of an agreement to transfer all assets of Integrated TeleServices, Inc. (Integrated), a non-dominant telecommunications carrier and competitive local carrier, to ECI Communications, Inc. (ECI) d/b/a ITS Network Services, a Nevada corporation. The application is unopposed. The application is granted.

2. Description of Applicants

Integrated, a California corporation, was authorized to provide telecommunications services in California as a switchless reseller pursuant to Decision (D.) 95-01-005 and to provide resold competitive local exchange service by D.00-05-013. Integrated operates in California under U-5441-C. Integrated provides interstate and international telecommunications service as a reseller pursuant to authority granted by the Federal Communications Commission. Prior to receiving authority to provide local exchange service in California,

Integrated filed for reorganization under Chapter 11 of the United States bankruptcy law. Despite the bankruptcy filing, Integrated continues to provide resold interexchange services and Centrex services in California, but it does not currently serve any other local exchange customers.

ECI is a Nevada corporation qualified to conduct business in California. ECI is a newly formed company that is currently managing the business of Integrated pursuant to a management agreement, which was approved by the Bankruptcy Court on July 31, 2001.

3. Nature of Application

Integrated and ECI (jointly “Applicants”) request approval for ECI to acquire the interexchange and local resale operating authorities and other assets of Integrated. Under the Asset Purchase Agreement (Agreement) filed with the application, ECI will acquire the accounts receivable, customer base, equipment and supplies, federal and state operating authorities, and the right to use the Integrated corporate and fictitious names. The Agreement provides that ECI will acquire the assets for \$400,000 in cash, a \$50,000 secured note, and 666,667 shares of ECI common stock.

Integrated entered into the Agreement with ECI to raise capital to satisfy its debts. According to Applicants, the transaction with ECI will enable Integrated’s existing customers to continue to receive service without interruption, while providing Integrated’s creditors with more funds than would have been available through a simple liquidation. The application states that ECI will continue to provide service at rates that are the same or lower than Integrated’s current rates. Further, ECI intends to continue providing service with the same support personnel, who are currently employed by Integrated.

The application provides a description of ECI's management team of Calvin Wong, Alex Soong, and Ed Jacobs, all of whom have experience in telecommunications related companies. Following approval of the application, ECI intends to continue to operate Integrated's existing interexchange business and expand the operation to include competitive local exchange service.

The parties in the application have attached copies of the Asset Purchase Agreement, ECI's Articles of Incorporation, and ECI's relevant financial information.

4. Customer Notification

The application states that Applicants will provide written notification to residential customers of the transfer of interexchange services at least 30 days prior to the transfer. The notice will include a description of the proposed transfer, all applicable rates, terms, and conditions of service following the transfer, a statement of the right of customers to transfer to another telephone corporation, a toll-free number for customer questions, and a statement that the transfer will be effectuated without charge to the customers. All business interexchange and Centrex customers will also receive equivalent notice of the transfer.

5. Discussion

Pub. Util. Code § 851 provides that no public utility may transfer its property that is necessary or useful in performing its duties to the public without first having secured the Commission's authorization. Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of this and related sections is to enable the Commission, before any

transfer of public utility property is consummated, to review the situation and to take such an action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed asset sale and transfer of control here will enable ECI to continue to provide service to Integrated's customers. Customers will receive notice of the transfer of Integrated to ECI and will not be charged for the transfer of service to ECI. ECI has the financial qualifications and telecommunications background necessary to operate Integrated. There have been no protests to this application. Further, the proposed customer notification described in the application conforms to the Commission's notice requirements for transfer of a customer base from one carrier to another, as adopted in D.97-06-096. We will condition approval of this application on the provision of this customer notice to Integrated's interexchange customers in accordance with D.97-06-096, and equivalent notice to Integrated's business interexchange and Centrex customers.

In Resolution ALJ 176-3075, dated November 8, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311 (g)(2), the otherwise applicable 30-day period for public review and comment is waived.

6. Request for Confidentiality

Applicants request to file under seal Exhibit E containing a copy of ECI's current bank account statement. Exhibit E is used in the application to

demonstrate that ECI meets the Commission's cash requirements for resellers. Applicants contend that Exhibit E contains non-public bank account information and that disclosure of this information could subject Applicants to fraud or other financial harm. We have granted similar requests for confidential treatment in the past and will do so here.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of October 29, 2001.
2. No protests have been filed.
3. Applicants seek approval pursuant to Pub. Util. Code § 851 of a transaction that will transfer control and sell all assets of Integrated to ECI.
4. Integrated is a switchless reseller of telecommunications services in California.
5. ECI is a Nevada corporation.
6. There will be no change in name, current services or rates provided by Integrated as a result of the transfer of control.
7. ECI has the financial and managerial qualifications to support the operation of Integrated.
8. Applicants will provide notice to residential interexchange customers of the transfer in accordance with D.97-06-096 and equivalent notice to business and Centrex customers.
9. Applicants request that financial information contained in Exhibit E of the application be kept under seal.
10. Public disclosure of the information contained in Exhibit E would place Applicants at an unfair business disadvantage.

Conclusions of Law

1. The proposed sale of assets and transfer of control is not adverse to the public interest.
2. Approval should be conditioned on ECI's provision of appropriate notice to all Integrated customers as described in this order.
3. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
4. The application should be approved subject to the terms and conditions set forth below.
5. Applicants' request to file Exhibit E under seal should be granted for two years.

O R D E R

IT IS ORDERED that:

1. Integrated TeleServices, Inc. (Integrated) and ECI Communications, Inc. (ECI), d/b/a ITS Network Services, are authorized pursuant to Pub. Util. Code §§ 851 through 854 to enter into the agreement, as more fully described in the application and its exhibits, by which ECI will acquire the assets and operating authorities of Integrated, and conditioned on the provision of notice of the transfer to all customers as described in this order.
2. Integrated and ECI shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. Integrated and ECI shall file new tariffs incorporating any changes in name, rates, services, and management authorized in the transfer transaction.

4. Integrated and ECI shall make all books and records available for review and inspection upon Commission staff request.

5. ECI shall comply with all conditions for operating authority previously set forth by the Commission for Integrated in D.95-01-005 and D.00-05-013.

6. ECI shall be held responsible for compliance with the customer notice requirements of D.97-06-096 and equivalent notice to business and Centrex customers.

7. The authority granted herein shall expire if not exercised within one year of the date of this order.

8. Applicants' request to have the financial information filed with this application in Exhibit E, kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

9. If the Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

10. Application 01-10-025 is closed.

This order is effective today.

Dated January 9, 2002, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners